

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2738 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.
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MOMADSAFI ALIMOHMAD SAIYAD

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner
MR RM CHAUHAN AGP for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 11/08/98

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order of detention dated 29-1-1998 passed by the Police Commissioner, Ahmedabad City, under Section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA Act").

The detaining authority , after considering the three criminal cases registered against the petitioner

one of which is pending in the Court while two are at the investigation stage for the offences under sections 379, 454, 457, 380 and 114 of the IPC, and the statements of four witnesses who were beaten in the incidents which took place on 4-1-98 and 10-1-98, recorded a finding that the petitioner is a dangerous person within the meaning of Section 2 (c) of the PASA Act and arrived at the subjective satisfaction that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary to detain the petitioner and passed the impugned order of detention which is challenged by the petitioner in this petition. So far as the incident of 4-1-98 is concerned, it is alleged by the concerned witness that he was beaten by the petitioner when he refused to purchase the scrap brought by the petitioner and his associate and took away Rs.350/-. In the second incident of 10-1-98 the witness was beaten on the ground that he was informant of the police and took away Rs.275/- from the pocket of the witness. On both the occasions the petitioner gave threat by taking out knife and when people gathered to watch the incident, the petitioner and his associates rushed towards the crowd, people started running helter-skelter and an atmosphere of fear and terror was created and an even tempo of life was disturbed.

On the basis of the aforesaid material, the detaining authority recorded a finding that the petitioner is a dangerous person within the meaning of Section 2(c) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention against the petitioner, which has been challenged by the petitioner by way of this petition.

This petition is required to be allowed on the ground that even if the allegations made against the petitioner are accepted as true for the sake of arguments, the same at best can be treated as breach of law and order and not public order. I have gone through the statements of the witnesses which are stereo-type. Reading the same, it clearly establishes without any manner of doubt that the statements are quite general and vague in nature and the alleged incidents are against individuals and the general public is not concerned at all and, therefore, it cannot be contended that the petitioner is involved in committing breaches of public order. Even if the allegations made are believed to be true, the same at best can be termed as breach of law and order and in no circumstances the same can be termed as breach of public order. Consequently, therefore, the

satisfaction arrived at by the detaining authority that the petitioner is a dangerous person is also visited . The order of detention is therefore liable to be quashed and set aside.

In the result, this petition is allowed. The order of detention dated 29-1-98 is quashed and set aside. The detenu Momadsafi Alimohmad Saiyad is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs.

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